

FIRST REGULAR SESSION

HOUSE BILL NO. 1058

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HAUSMAN.

2342H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 452, RSMo, by adding thereto twelve new sections relating to the prevention of child abductions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 452, RSMo, is amended by adding thereto twelve new sections, to be known as sections 452.1100, 452.1102, 452.1104, 452.1106, 452.1108, 452.1110, 452.1112, 452.1114, 452.1116, 452.1118, 452.1120, and 452.1122, to read as follows:

452.1100. Sections 452.1100 to 452.1122 may be cited as the "Uniform Child Abduction Prevention Act".

452.1102. In sections 452.1100 to 452.1122:

(1) "Abduction" means the wrongful removal or wrongful retention of a child;

(2) "Child" means an unemancipated individual who is less than eighteen years of age;

(3) "Child-custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order;

(4) "Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is at issue. The term includes a proceeding for divorce, dissolution of marriage, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, or protection from domestic violence;

(5) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination;

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (6) "Petition" includes a motion or its equivalent;

16 (7) "Record" means information that is inscribed on a tangible medium or that
17 is stored in an electronic or other medium and is retrievable in perceivable form;

18 (8) "State" means a state of the United States, the District of Columbia, Puerto
19 Rico, the United States Virgin Islands, or any territory or insular possession subject to
20 the jurisdiction of the United States. The term includes a federally recognized Indian
21 tribe or nation;

22 (9) "Travel document" means records relating to a travel itinerary, including
23 travel tickets, passes, reservations for transportation, or accommodations. The term
24 does not include a passport or visa;

25 (10) "Wrongful removal" means the taking of a child that breaches rights of
26 custody or visitation given or recognized under the law of this state;

27 (11) "Wrongful retention" means the keeping or concealing of a child that
28 breaches rights of custody or visitation given or recognized under the law of this state.

 452.1104. Sections 452.730, 452.735, and 452.820 of the uniform child custody
2 jurisdiction and enforcement act apply to cooperation and communications among
3 courts in proceedings under sections 452.1100 to 452.1122.

 452.1106. 1. A court on its own motion may order abduction prevention
2 measures in a child custody proceeding if the court finds that the evidence establishes a
3 credible risk of abduction of the child.

4 2. A party to a child custody determination or another individual or entity
5 having a right under the law of this state or any other state to seek a child custody
6 determination for the child may file a petition seeking abduction prevention measures to
7 protect the child under sections 452.1100 to 452.1122.

8 3. A prosecutor or public authority designated under section 452.910 may seek a
9 warrant to take physical custody of a child under section 452.1116 or other appropriate
10 prevention measures.

 452.1108. 1. A petition under sections 452.1100 to 452.1122 may be filed only in a
2 court that has jurisdiction to make a child custody determination with respect to the
3 child at issue under sections 452.700 to 452.930.

4 2. A court of this state has temporary emergency jurisdiction under section
5 452.755 if the court finds a credible risk of abduction.

 452.1110. A petition under sections 452.1100 to 452.1122 must be verified and
2 include a copy of any existing child custody determination, if available. The petition
3 must specify the risk factors for abduction, including the relevant factors described in
4 section 452.1112. Subject to subsection 5 of section 452.780, if reasonably ascertainable,
5 the petition must contain:

- 6 (1) The name, date of birth, and gender of the child;
7 (2) The customary address and current physical location of the child;
8 (3) The identity, customary address, and current physical location of the
9 respondent;
10 (4) A statement of whether a prior action to prevent abduction or domestic
11 violence has been filed by a party or other individual or entity having custody of the
12 child, and the date, location, and disposition of the action;
13 (5) A statement of whether a party to the proceeding has been arrested for a
14 crime related to domestic violence, stalking, or child abuse or neglect, and the date,
15 location, and disposition of the case; and
16 (6) Any other information required to be submitted to the court for a child
17 custody determination under section 452.780.

 452.1112. 1. In determining whether there is a credible risk of abduction of a
2 child, the court shall consider any evidence that the petitioner or respondent:

- 3 (1) Has previously abducted or attempted to abduct the child;
4 (2) Has threatened to abduct the child;
5 (3) Has recently engaged in activities that may indicate a planned abduction,
6 including:
7 (a) Abandoning employment;
8 (b) Selling a primary residence;
9 (c) Terminating a lease;
10 (d) Closing bank or other financial management accounts, liquidating assets,
11 hiding or destroying financial documents, or conducting any unusual financial
12 activities;
13 (e) Applying for a passport or visa or obtaining travel documents for the
14 respondent, a family member, or the child; or
15 (f) Seeking to obtain the child's birth certificate or school or medical records;
16 (4) Has engaged in domestic violence, stalking, or child abuse or neglect;
17 (5) Has refused to follow a child custody determination;
18 (6) Lacks strong familial, financial, emotional, or cultural ties to the state or the
19 United States;
20 (7) Has strong familial, financial, emotional, or cultural ties to another state or
21 country;
22 (8) Is likely to take the child to a country that:
23 (a) Is not a party to the Hague Convention on the Civil Aspects of International
24 Child Abduction and does not provide for the extradition of an abducting parent or for
25 the return of an abducted child;

26 (b) Is a party to the Hague Convention on the Civil Aspects of International
27 Child Abduction but:

28 a. The Hague Convention on the Civil Aspects of International Child Abduction
29 is not in force between the United States and that country;

30 b. Is noncompliant according to the most recent compliance report issued by the
31 United States Department of State; or

32 c. Lacks legal mechanisms for immediately and effectively enforcing a return
33 order under the Hague Convention on the Civil Aspects of International Child
34 Abduction;

35 (c) Poses a risk that the child's physical or emotional health or safety would be
36 endangered in the country because of specific circumstances relating to the child or
37 because of human rights violations committed against children;

38 (d) Has laws or practices that would:

39 a. Enable the respondent, without due cause, to prevent the petitioner from
40 contacting the child;

41 b. Restrict the petitioner from freely traveling to or exiting from the country
42 because of the petitioner's gender, nationality, marital status, or religion; or

43 c. Restrict the child's ability legally to leave the country after the child reaches
44 the age of majority because of a child's gender, nationality, or religion;

45 (e) Is included by the United States Department of State on a current list of state
46 sponsors of terrorism;

47 (f) Does not have an official United States diplomatic presence in the country; or

48 (g) Is engaged in active military action or war, including a civil war, to which the
49 child may be exposed;

50 (9) Is undergoing a change in immigration or citizenship status that would
51 adversely affect the respondent's ability to remain in the United States legally;

52 (10) Has had an application for United States citizenship denied;

53 (11) Has forged or presented misleading or false evidence on government forms
54 or supporting documents to obtain or attempt to obtain a passport, a visa, travel
55 documents, a Social Security card, a driver's license, or other government-issued
56 identification card or has made a misrepresentation to the United States government;

57 (12) Has used multiple names to attempt to mislead or defraud; or

58 (13) Has engaged in any other conduct the court considers relevant to the risk of
59 abduction.

60 2. In the hearing on a petition under sections 452.1100 to 452.1122, the court
61 shall consider any evidence that the respondent believed in good faith that the
62 respondent's conduct was necessary to avoid imminent harm to the child or respondent

63 and any other evidence that may be relevant to whether the respondent may be
64 permitted to remove or retain the child.

452.1114. 1. If a petition is filed under sections 452.1100 to 452.1122, the court
2 may enter an order that must include:

3 (1) The basis for the court's exercise of jurisdiction;

4 (2) The manner in which notice and opportunity to be heard were given to the
5 persons entitled to notice of the proceeding;

6 (3) A detailed description of each party's custody and visitation rights and
7 residential arrangements for the child;

8 (4) A provision stating that a violation of the order may subject the party in
9 violation to civil and criminal penalties; and

10 (5) Identification of the child's country of habitual residence at the time of the
11 issuance of the order.

12 2. If, at a hearing on a petition under sections 452.1100 to 452.1122 or on the
13 court's own motion, the court after reviewing the evidence finds a credible risk of
14 abduction of the child, the court shall enter an abduction prevention order. The order
15 must include the provisions required by subsection 1 of this section and measures and
16 conditions, including those in subsections 3, 4, and 5 of this section, that are reasonably
17 calculated to prevent abduction of the child, giving due consideration to the potential
18 harm to the child from an abduction, the legal and practical difficulties of returning the
19 child to the jurisdiction if abducted, and the reasons for the potential abduction,
20 including evidence of domestic violence, stalking, or child abuse or neglect.

21 3. An abduction prevention order may include one or more of the following:

22 (1) An imposition of travel restrictions that require that a party traveling with
23 the child outside a designated geographical area provide the other party with the
24 following:

25 (a) The travel itinerary of the child;

26 (b) A list of physical addresses and telephone numbers at which the child can be
27 reached at specified times; and

28 (c) Copies of all travel documents;

29 (2) A prohibition of the respondent directly or indirectly:

30 (a) Removing the child from this state, the United States, or another geographic
31 area without permission of the court or the petitioner's written consent;

32 (b) Removing or retaining the child in violation of a child custody
33 determination;

34 (c) Removing the child from school or a child care or similar facility; or

35 (d) Approaching the child at any location other than a site designated for
36 supervised visitation;

37 (3) A requirement that a party register the order in another state as a
38 prerequisite to allowing the child to travel to that state;

39 (4) With regard to the child's passport:

40 (a) A direction that the petitioner place the child's name in the United States
41 Department of State's Child Passport Issuance Alert Program;

42 (b) A requirement that the respondent surrender to the court or the petitioner's
43 attorney any United States or foreign passport issued in the child's name, including a
44 passport issued in the name of both the parent and the child; and

45 (c) A prohibition upon the respondent from applying on behalf of the child for a
46 new or replacement passport or visa;

47 (5) As a prerequisite to exercising custody or visitation, a requirement that the
48 respondent provide:

49 (a) To the United States Department of State Office of Children's Issues and the
50 relevant foreign consulate or embassy, an authenticated copy of the order detailing
51 passport and travel restrictions for the child;

52 (b) To the court:

53 a. Proof that the respondent has provided the information in paragraph (a) of
54 this subdivision; and

55 b. An acknowledgment in a record from the relevant foreign consulate or
56 embassy that no passport application has been made, or passport issued, on behalf of the
57 child;

58 (c) To the petitioner, proof of registration with the United States Embassy or
59 other United States diplomatic presence in the destination country and with the Central
60 Authority for the Hague Convention on the Civil Aspects of International Child
61 Abduction, if that Convention is in effect between the United States and the destination
62 country, unless one of the parties objects; and

63 (d) A written waiver under 5 U.S.C. Section 552a of the Privacy Act of 1974, as
64 amended, with respect to any document, application, or other information pertaining to
65 the child authorizing its disclosure to the court and the petitioner; and

66 (6) Upon the petitioner's request, a requirement that the respondent obtain an
67 order from the relevant foreign country containing terms identical to the child custody
68 determination issued in the United States.

69 4. In an abduction prevention order, the court may impose conditions on the
70 exercise of custody or visitation that:

71 (1) Limit visitation or require that visitation with the child by the respondent be
72 supervised until the court finds that supervision is no longer necessary and order the
73 respondent to pay the costs of supervision;

74 (2) Require the respondent to post a bond or provide other security in an
75 amount sufficient to serve as a financial deterrent to abduction, the proceeds of which
76 may be used to pay for the reasonable expenses of recovery of the child, including
77 reasonable attorneys' fees and costs if there is an abduction; and

78 (3) Require the respondent to obtain education on the potentially harmful effects
79 to the child from abduction.

80 5. To prevent imminent abduction of a child, a court may:

81 (1) Issue a warrant to take physical custody of the child under section 452.1116
82 or the law of this state other than sections 452.1100 to 452.1122;

83 (2) Direct the use of law enforcement to take any action reasonably necessary to
84 locate the child, obtain return of the child, or enforce a custody determination under
85 sections 452.1100 to 452.1122 or the law of this state other than sections 452.1100 to
86 452.1122; or

87 (3) Grant any other relief allowed under the law of this state other than sections
88 452.1100 to 452.1122.

89 6. The remedies provided in sections 452.1100 to 452.1122 are cumulative and do
90 not affect the availability of other remedies to prevent abduction.

 452.1116. 1. If a petition under sections 452.1100 to 452.1122 contains
2 allegations, and the court finds that there is a credible risk that the child is imminently
3 likely to be wrongfully removed, the court may issue an ex parte warrant to take
4 physical custody of the child.

5 2. The respondent on a petition under subsection 1 of this section must be
6 afforded an opportunity to be heard at the earliest possible time after the ex parte
7 warrant is executed, but not later than the next judicial day unless a hearing on that
8 date is impossible. In that event, the court shall hold the hearing on the first judicial day
9 possible.

10 3. An ex parte warrant under subsection 1 of this section to take physical
11 custody of a child must:

12 (1) Recite the facts upon which a determination of a credible risk of imminent
13 wrongful removal of the child is based;

14 (2) Direct law enforcement officers to take physical custody of the child
15 immediately;

16 (3) State the date and time for the hearing on the petition; and

17 **(4) Provide for the safe interim placement of the child pending further order of**
18 **the court.**

19 **4. If feasible, before issuing a warrant and before determining the placement of**
20 **the child after the warrant is executed, the court may order a search of the relevant**
21 **databases of the National Crime Information Center system and similar state databases**
22 **to determine if either the petitioner or respondent has a history of domestic violence,**
23 **stalking, or child abuse or neglect.**

24 **5. The petition and warrant must be served on the respondent when or**
25 **immediately after the child is taken into physical custody.**

26 **6. A warrant to take physical custody of a child, issued by this state or another**
27 **state, is enforceable throughout this state. If the court finds that a less intrusive remedy**
28 **will not be effective, it may authorize law enforcement officers to enter private property**
29 **to take physical custody of the child. If required by exigent circumstances, the court**
30 **may authorize law enforcement officers to make a forcible entry at any hour.**

31 **7. If the court finds, after a hearing, that a petitioner sought an ex parte warrant**
32 **under subsection 1 of this section for the purpose of harassment or in bad faith, the**
33 **court may award the respondent reasonable attorney's fees, costs, and expenses.**

34 **8. Sections 452.1100 to 452.1122 does not affect the availability of relief allowed**
35 **under the law of this state other than sections 452.1100 to 452.1122.**

452.1118. An abduction prevention order remains in effect until the earliest of:

2 **(1) The time stated in the order;**

3 **(2) The emancipation of the child;**

4 **(3) The child's attaining eighteen years of age; or**

5 **(4) The time the order is modified, revoked, vacated, or superseded by a court**
6 **with jurisdiction under sections 452.740, 452.745, and 452.750 and applicable law of this**
7 **state.**

452.1120. In applying and construing sections 452.1100 to 452.1122,
2 **consideration must be given to the need to promote uniformity of the law with**
3 **respect to its subject matter among states that enact it.**

452.1122. Sections 452.1100 to 452.1122 modifies, limits, and supersedes the
2 **federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section**
3 **7001, et seq., but does not modify, limit, or supersede Section 101(c) of the act, 15 U.S.C.**
4 **Section 7001(c), or authorize electronic delivery of any of the notices described in**
5 **Section 103(b) of that act, 15 U.S.C. Section 7003(b).**